

DMR AQUACULTURE LEASE ADMINISTRATIVE PROCESS
STANDARD LEASE (UP TO 100 ACRES, UP TO 10 YEARS)

I. Pre-Application Process (For applications submitted after May 1, 2005)

- Prior to submitting an application, the applicant is required to attend a pre-application meeting with DMR staff and the harbormaster and/or a municipal officer of the municipality in which the proposed lease is located
- Following the meeting, and before submitting the application, the applicant is required to hold a public scoping session, which is an informal public meeting in which the applicant will describe the proposal and members of the public can ask questions and voice concerns
- The Department provides notice of the scoping session to riparian landowners within 1,000 feet of the proposed lease, to officials of the municipality or municipalities in which the proposed lease would be located, and interested governmental agencies.
- The applicant publishes a notice in a newspaper at least ten days prior to the scoping session.

II. Application submission

- Application fees: No Discharge leases Discharge leases

Effective January 1, 2005: \$500 \$1,000
Effective January 1, 2006: \$1,000 \$1,500
Effective January 1, 2007: \$1,500 \$2,000
- When submitted, an application is reviewed for completeness
- If not complete, it is sent back with a letter explaining the missing information that is needed
- If complete, the process begins

III. Application Complete

- Once an application is complete, the applicant is notified
- A copy of the completed application is sent to a municipal official, the harbormaster for the municipality, the Army Corps of Engineers, IF&W, and riparian landowners (waterfront landowners within 1,000 ft. of the proposed lease site)
- Finfish applications are also sent to the Atlantic Salmon Commission and DEP
- The harbormaster also receives a questionnaire which asks for information regarding navigation and existing uses of the area
- A form is also sent to the relevant agencies that asks for comments on the proposal

IV. Department Site Review

- Jon Lewis and Marcy Nelson of DMR conduct a site visit for each standard application

- During the site visit, they check the coordinates, dive the site and make a video recording of the dive, take water quality readings (temperature, salinity, etc.), and make other visual observations regarding uses of the area, riparian access and navigation
- Jon and Marcy write a site report which includes the information obtained during the site visit and other information they gather from the local harbormaster, DMR's water quality division, and IF&W
- The site report includes information regarding each of the decision criteria

V. Hearing Scheduled

- When a hearing is scheduled, a notice is sent out with the hearing information to the applicant, riparian landowners, the municipality, and the Army Corps of Engineers
- On average, a hearing is scheduled approximately 3 months in advance
- Hearings are scheduled in the evenings, unless the Department finds that the hearing will be lengthy and is scheduled to begin earlier in the day

VI. Intervenor Requests

- Those seeking to become intervenors, or legal parties, in the hearing process must apply for intervenor status at least 10 days prior to the hearing
- The department will grant intervenor status to those who demonstrate that they will be directly and substantially affected by the granting of a lease
- A municipality is automatically granted intervenor status upon request
- The only difference between an intervenor and a member of the public is that, as a legal party, an intervenor is copied on all communications between the department and the applicant and an intervenor receives a copy of the proposed decision and has 10 days to comment on the decision

VII. Hearing Notice

- In addition to the notices mentioned above, at least 30 days prior to the hearing, hearing notices, along with a copy of the application and site report, are sent out to the municipality, the riparian landowners, interested agencies and other interested parties (DMR maintains an ongoing mailing list for those who request to receive information on aquaculture hearings)
- Notices are placed in a newspaper of general circulation at least 30 days and at least 10 days prior to the hearing
- Notice is also placed in Commercial Fisheries News

VIII. Hearing

- The hearing is a formal adjudicatory hearing run by the aquaculture hearings officer
- Order of testimony – applicant, DMR, other agencies or municipalities, intervenors, public

- After each witnesses testimony, there is an opportunity to ask questions of the witness
- Order of questions: the hearing officer and DMR staff (may also ask questions at any time), the applicant, other agencies or municipalities, intervenors, public
- The record closes at the end of the hearing, unless the hearing officer determines it is necessary to keep the record open

IX. Decision

- The hearing officer will write a proposed decision that is sent out to all legal parties (applicant and intervenors)
- The parties have ten days to comment on the proposed decision
- The proposed decision and any comments submitted are forwarded to the commissioner for his final decision
- The rules provide that the department has 120 days from the date of the hearing to issue a final decision

X. Decision Criteria

- Statutory (12 M.R.S.A. § 6072): In evaluating the proposed lease, the commissioner shall take into consideration the number and density of aquaculture leases in an area and may grant the lease if the proposed lease meets the following conditions as defined by rule.

A. Will not unreasonably interfere with the ingress and egress of riparian owners;

B. Will not unreasonably interfere with navigation;

C. Will not unreasonably interfere with fishing or other uses of the area. For the purposes of this paragraph, "fishing" includes public access to a redeemable shellfish resource, as defined by the department, for the purpose of harvesting, provided that the resource is commercially significant and subject to a pollution abatement plan that predates the lease application, that includes verifiable activities in the process of implementation and that is reasonably expected to result in the opening of the area to the taking of shellfish within 3 years;

D. Will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the lease site and surrounding marine and upland areas to support existing ecologically significant flora and fauna;

E. The applicant has demonstrated that there is an available source of organisms to be cultured for the lease site;

F. Does not unreasonably interfere with public use or enjoyment within 1,000 feet of a beach, park or docking facility owned by the Federal Government, the State Government or a municipal governmental agency or certain conserved lands. For purposes of this paragraph, "conserved lands" means land in which fee ownership has been acquired by the municipal government, State Government or Federal Government in order to protect the important ecological, recreational, scenic, cultural or historic attributes of that property;

G. Will not result in unreasonable impact from noise or light at the boundaries of the lease site; and

H. Upon the implementation of rules, the lease must be in compliance with visual impact criteria adopted by the commissioner relating to color, height, shape and mass.

- Regulatory (Chapter 2.37):

(1) Riparian Owners Ingress and Egress. The Commissioner shall examine whether the riparian owners can safely navigate to their shore. The Commissioner shall consider the type of shore involved and the type of vessel that can reasonably land on that shore. He/she shall consider the type of structures proposed for the lease and their potential impact on the vessels which would need to maneuver around those structures.

(2) Navigation. The Commissioner shall examine whether any lease activities requiring surface and or subsurface structures would interfere with commercial or recreational navigation around the lease area. The Commissioner shall consider the current uses and different degrees of use of the navigational channels in the area in determining the impact of the lease operation. For example: A lease area adjacent to the usual course of a barge in tow shall be held to a stricter standard than one in an area frequented by only outboard skiffs. High tide "short cuts" shall not be considered navigational ways for the purposes of this section. Any surface structures that could be within 50' of a restricted channel at low tide must be marked with retro reflective tape and a radar reflector.

(3) Fishing. The Commissioner shall examine whether the lease activities would unreasonably interfere with commercial or recreational fishing or other water-related uses of the area. This examination shall consider such factors as the number of individuals that participate in recreational or commercial fishing, the amount and type of fishing gear utilized, the number of actual fishing days, and the amount of fisheries resources harvested from the area.

(4) Other Aquaculture Uses. The Commissioner shall consider any evidence submitted concerning other aquaculture uses of the area. The intensity and frequency of such uses as well as the degree of exclusivity

required for each use shall be factors in the Commissioner's determination of whether any interference is unreasonable. The number, size, location, and type of other aquaculture leases shall be considered by the Commissioner.

(5) Existing System Support. The Commissioner shall consider the degree to which the use of the lease site will interfere with the ability of the area to support ecologically significant flora and fauna. Such factors as the degree to which physical displacement of rooted or attached marine vegetation occurs, the amount of alteration of current flow, increased rates of sedimentation or sediment resuspension, and disruption of finfish migration shall be considered by the Commissioner in this determination.

(6) Source of Organisms to be Cultured. The Commissioner shall include but not be limited to, consideration of the source's biosecurity, sanitation, and applicable fish health practices.

(7) Interference with Public Facilities. The Commissioner shall consider the degree to which the lease interferes with public use or enjoyment within 1,000 feet of a beach, park, docking facility or certain conserved lands owned by the Federal Government, the State Government or a municipal government. Conserved lands means land in which fee ownership has been acquired by the state, federal or municipal government in order to protect the important ecological, recreational, scenic, cultural or historic attributes of that property. Leases may not unreasonably interfere with public use or enjoyment of such beaches, parks, docking facilities, or conserved lands. In determining interference with the public use or enjoyment of conserved lands, the Commissioner shall consider the purpose(s) for which the land has been acquired.

(8) Lighting.

Applicability. These rules apply to all exterior lighting used on buildings, equipment, and vessels permanently moored or routinely used at all aquaculture facilities, with the exception of lighting for navigation, emergencies, and construction of a temporary nature.

Exterior lighting. All exterior lighting shall be mounted in cutoff fixtures. A cutoff fixture is one that projects no more than 2.5% of light above the horizontal plane of the light fixture's lowest part. This does not include spotlights or floodlights, which are addressed below.

All exterior lighting shall be designed, located, installed, and directed in such a manner as to illuminate only the target area and to reduce glare.

Exterior lighting shall be no more than 250 watts per fixture, with the exception of required navigational lighting, spotlights and floodlights.

When harvest schedules, feed schedules, or other similar circumstances result in the need to work beyond daylight hours, spotlights or floodlights may be used to ensure safe working conditions and safe vessel operation. Such lighting shall be directed only at the work area to be illuminated, and must be the minimum needed for safe operations.

If used, all husbandry lighting shall be submersible and operated at all times below the water line, except during examination for maintenance and repair.

When necessary, security lighting may be used, but shall conform to the requirements for exterior lighting.

An applicant shall demonstrate that all reasonable measures will be taken to mitigate light impacts from the lease activities.

No provision in these rules is intended to restrict vessel lighting levels below what is necessary for safety or as is otherwise required by state or federal law.

(9) Noise

Applicability. These rules apply to the routine operation of all aquaculture facilities, including harvesting, feeding, and tending equipment at leases authorized by the Department of Marine Resources, with the following exemptions:

- Watercraft, harvest or transport barges, and maintenance equipment while underway;
- The unamplified human voice and other sounds of natural origin;
- Bells, whistles, or other navigational aids;
- Emergency maintenance and repair of aquaculture equipment;
- Warning signals and alarms; and
- Events not reasonably within the control of the leaseholder.

Mitigation:

All motorized equipment used during routine operation at an aquaculture facility must be designed or mitigated to reduce the sound level produced to the maximum extent practical.

Centralized feeding barges, or feeding distribution systems, shall be designed or mitigated to reduce noise by installing the most effective commercially available baffles at air intakes and outlets, mounting of all relevant equipment to minimize vibration between it and the hull, and using the most effective commercially available soundproofing insulation.

All fixed noise sources shall be directed away from any residences or areas of routine use on adjacent land.

An applicant shall demonstrate that all reasonable measures will be taken to mitigate noise impacts from the lease activities.

(10) Visual Impact

Applicability. This rule applies to all equipment, buildings, and watercraft used at an aquaculture facility, excluding watercraft not permanently moored or routinely used at a lease location such as harvest or feed delivery vessels. Other equipment or vessels not moored within the boundaries of a lease, but routinely used or owned by the leaseholder are subject to these requirements.

Building profiles. The size, height, and mass of buildings and equipment used at aquaculture facilities shall be constructed so as to minimize the visual impact as viewed from the water.

Height limitations. All buildings, vessels, barges, and structures shall be no more than one story and no more than 20 feet in height from the water line. Height shall be measured from waterline to the top of the roof or highest fixed part of the structure or vessel. This height limitation excludes antennae, cranes, and other similar auxiliary equipment. Structures that exist or are under construction as of the effective date of this rule are exempted from the height restriction for their useful lifetime.

Roof & siding materials. Roofing and siding materials shall not be reflective or glossy in appearance or composition.

Color. Equipment and structures shall be painted, or be of, a color that does not contrast with the surrounding area. Acceptable hues are grays, blacks, browns, blues, and greens that have a sufficiently low value, or darkness, so as to blend in with the surrounding area. Colors shall be flat, not reflective, in appearance.

The color of equipment, such as buoys, shall not compromise safe navigation or conflict with US Coast Guard Aids to Private Navigation standards.

XI. Lease is Granted

- If a lease is granted a lessee shall:
- record the lease in the registry of deeds
- publish a notice in the newspaper
- submit an annual report to the department
- establish an escrow or secure a performance bond in accordance with the following:

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| 1. no structure, no discharge | \$500 |
| 2. no structure, discharge | \$500 |
| 3. structure ≤ 400 sq. ft., no discharge | \$1,500 |
| 4. structure >400 sq. ft, no discharge | \$5,000 |
| 5. structure, discharge | \$25,000 |
- pay an annual lease rental fee of \$100 per acre

XII. Lease Renewal

- At least 90 days prior to the expiration date, a leaseholder must file an application for renewal with the department
- The application shall include a nonrefundable application fee of \$1,000 for non-discharge leases and \$1,500 for discharge leases
- An application for renewal includes information on the type and amount of aquaculture to be conducted during the new lease term
- Renewals go through the same notice procedures as new lease applications
- There is a thirty-day comment period in which comments may be submitted and requests for a hearing are made
- A hearing is held if the department receives 5 or more requests for a hearing
- Criteria for renewal:
 1. lessee has complied with the lease agreement during term of lease
 2. renewal of the lease is in the best interest of the State
 3. renewal will not cause the lessee to become a tenant of any kind in leases covering an aggregate of more than 300 acres (the Commissioner may authorize a person to exceed the 300 acre limit, up to a maximum of 500 acres, provided that no more than 300 acres are “non-fallowed” at any time)
 4. the lease is not being held for speculative purposes

XIII. Transfer

- A lease may be transferred to another person for the remainder of the lease term if certain conditions are met
- The application shall include a nonrefundable application fee of \$2,500 for non-discharge leases and \$5,000 for discharge leases
- Transfers go through the same notice procedures as new lease applications
- There is a thirty-day comment period in which comments may be submitted and requests for a hearing are made
- A hearing is held if the department receives 5 or more requests for a hearing
- Criteria for transfer:
 1. change in lessee does not violate any of the decision criteria
 2. transfer is not intended to circumvent the intent of the section on preferences for the granting of leases

3. transfer will not cause the lessee to become a tenant of any kind in leases covering an aggregate of more than 300 acres (the Commissioner may authorize a person to exceed the 300 acre limit, up to a maximum of 500 acres, provided that no more than 300 acres are “non-fallowed” at any time)
4. the transfer is not for speculative purposes

XIV. Enforcement

- One enforcement tool for leaseholders that don't comply with the lease terms is revocation of the lease.
- There are also civil penalties for non-compliance with the statute or regulations.
- If the department receives a complaint, either someone from the DMR aquaculture staff will look into the problem and try to resolve it, or they will get Marine Patrol involved. If the issue cannot be resolved amicably, then civil penalties and/or revocation may be used.
- Marine Patrol makes routine inspections of aquaculture lease sites